

City of Costa Mesa

City Council Meeting

Service Request Follow-up

Meeting Date: February 17, 2004

TO: City Council

FROM: Tom Wood, Acting City Attorney

DATE: March 1, 2004

SUBJECT: Response to Request #R-021704-5: Follow Up – Mr. Israel, 2280
Newport Blvd.

During the "Public Comments" portion of the City Council meeting on February 17, 2004, Mr. Igal Israel stated that he had been denied "due process" because he was not given a public hearing before a criminal complaint was filed against him by the City Attorney's Office. Mr. Israel operates a construction business located at 2280 Newport Boulevard and he is being prosecuted for violating several Municipal Code regulations, e.g., unlawful outdoor storage. Mr. Israel claims he is supposed to be given a public hearing by the City Council before any criminal charges can be filed against him. He cited Costa Mesa Municipal Code section 1-33 (c) and (d).

Mr. Israel misreads this Municipal Code provision. I have quoted below the entire Section 1-33 for your convenience. As you can see, this section describes five types of enforcement remedies that are available to use against persons who violate the Municipal Code in order to obtain their compliance. As this section clearly states in the first paragraph: "Each method set forth herein is intended to be mutually exclusive and does not prevent concurrent or consecutive methods being used to achieve compliance against continuing violations." And again in the first sentence of the second paragraph, it states that "each violation of the provisions of this Code may be enforced alternatively as follows. . . ."

Therefore, the Administrative Hearing remedy described in subdivision (d) is one of five enforcement remedies available. The Administrative Hearing is not a first step that must be followed before any other enforcement remedy is used. In Mr. Israel's case, other remedies have been used to seek his compliance, but without success. A separate memo is being prepared by Senior Deputy City Attorney Marianne Milligan to provide you with the background surrounding Mr. Israel's code violations.

cc: Allan Roeder, City Manager; Don Lamm, Development Services Director

COSTA MESA MUNICIPAL CODE

Sec. 1-33. Violations, penalties and enforcement.

The city council of the City of Costa Mesa intends to secure compliance with the provisions of this Code. To the extent that such compliance may be achieved by less drastic methods of enforcement the following alternate, separate and distinct methods may be utilized. **Each method set forth herein is intended to be mutually exclusive and does not prevent concurrent or consecutive methods being used to achieve compliance against continuing violations.** Each and every day any such violations exist constitutes a separate offense.

Notwithstanding any other provision in this Code, **each violation of the provisions of this Code may be enforced alternatively as follows:**

(a) ***Infraction.*** Any person violating any of the provisions or failing to comply with any of the mandatory requirements of this Code may be prosecuted for an infraction. Written citations for infractions may be issued by police officers or designated nonsafety employees, who shall be designated by separate resolution pursuant to the provisions of California Penal Code Section 836.5. Any person convicted of an infraction under the provisions of this Code shall be punishable either by fines as is specified in the currently adopted Uniform Infraction Bail Schedule used by the Orange County Municipal Courts, or where no fine is specified therein by:

- (1) A fine not exceeding one hundred dollars (\$100.00) for a first violation;
- (2) A fine not exceeding two hundred dollars (\$200.00) for a second violation of the same ordinance within one (1) year;
- (3) A fine not exceeding five hundred dollars (\$500.00) for each additional violation of the same ordinance within one (1) year.

(b) ***Misdemeanor.*** Any person violating any of the provisions or failing to comply with any of the mandatory requirements of this Code may be prosecuted for a misdemeanor. Written citations for misdemeanors may be issued by police officers or by designated nonsafety employees, who shall be designated by separate resolution pursuant to the provisions of California Penal Code Section 836.5. Any person convicted of a misdemeanor under the provisions of this Code shall be punished by a fine not exceeding one thousand dollars (\$1,000.00) or imprisonment for a term not exceeding six (6) months, or by both such fine and imprisonment.

(c) ***Civil action.*** The city attorney, by and at the request of the city council, may institute an action in any court of competent jurisdiction to restrain, enjoin or abate the condition(s) found to be in violation of the provisions of this Code, as provided by law.

(d) ***Administrative hearing.*** Upon a finding by the city official invested with the authority to enforce the various provisions of this Code that a violation exists, he may notify the owner(s), occupant(s) or person(s) deemed responsible for said violation(s) that a public hearing shall be held before the city council to hear and determine the existence of said violation(s) and the anticipated compliance necessary, i.e. abatement or other action required. Said notification shall be in writing setting forth the alleged violation(s) and the anticipated action sought, and shall be given not later than ten (10) days prior to the scheduled date of the hearing. Said hearing shall be conducted in accordance with the city council's rules for the conduct of an administrative hearing. The decision of said hearing shall be enforceable as provided by law.

(e) ***Civil fines.*** Civil fines may be imposed pursuant to Chapter II of this title.